

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

4-1-75  
MAR 25 1993  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )  
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Federal-State Joint Board ) CC Docket No. 96-45  
On Universal Service )

COMMENTS ON PETITIONS FOR RECONSIDERATION

BellSouth Corporation, on behalf of itself and its affiliated companies, ("BellSouth") hereby submits its Comments on the petitions for reconsideration of the Commission's Fourth Order on Reconsideration in CC Docket No. 96-45.<sup>1</sup>

Several petitioners seek a declaration by the Commission that they are exempt from contributing to the universal service fund.<sup>2</sup> In evaluating these petitions, the Commission should continue to adhere to the principles it has applied in determining an entity's responsibility to contribute to the universal service fund. As the Commission has properly recognized, whether an entity should contribute to the fund should not turn upon whether the primary business is telecommunications, but instead, should be decided on the fact that, to the extent non-carriers offer telecommunications to others for a fee, these entities are competing with entities whose

<sup>1</sup> *In the Matter of Federal-State Joint Board On Universal Service*, CC Docket No. 96-45, and *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, Fourth Order On Reconsideration in CC Docket 96-45, Report And Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, (FCC 97-420), released December 30, 1997 (hereinafter "*Fourth Order*").

<sup>2</sup> See Petitions of National Public Radio, Inc., National Railroad Passenger Corporation, and the Wireless Cable Association International, Inc.

primary business is telecommunications. In these circumstances, the Commission has correctly concluded that the public interest and the Commission's competitive objectives are served by private service providers contributing to the universal service fund to the extent that they provide telecommunications services.<sup>3</sup> Nothing in the petitions provide a reason for disturbing this axiom.

The Commission has narrowly crafted exceptions to its rules regarding contributions. These *de minimus* exceptions should not be expanded. To the extent exemptions are permitted, the Commission must administer them in a competitively neutral manner. In this regard, the *Fourth Order* changed the treatment of reseller's revenues that are subject to the *de minimus* exemption. Under the *Fourth Order* such revenues are considered end user revenues of the underlying carrier. In its petition, CTIA objects to classifying exempt reseller revenues as revenues of the underlying carrier.<sup>4</sup> BellSouth agrees with CTIA and urges the Commission to reconsider its decision. The reclassification of revenues required by the *Fourth Order* is not competitively neutral. The Commission is shifting the reseller's obligation to contribute to the universal service fund to the underlying carrier. If the Commission continues to exempt certain resellers from contributing to the federal universal service fund, it should do so in a non-discriminatory, competitively neutral manner. To assure a competitively neutral approach, the Commission should determine the contributions of each contributing carrier based on its retail revenues and exclude the exempted resold revenues from the calculation. If the Commission

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<sup>3</sup> *Fourth Order* at ¶ 267.

<sup>4</sup> CTIA at 4.

fails to adopt this competitively neutral approach, it should reinstate the \$100 *de minimus* threshold.

In the *Fourth Order*, the Commission, on its own motion, reconsidered its determination that the core voice grade service to be included in the universal service definition should be in the frequency range of 500 Hertz and 4000 Hertz. The Commission found that such a bandwidth specification would require eligible carriers to comply with a voice grade access standard that is more exacting than current industry standards and that they did not intend such a result.<sup>5</sup> Thus, the Commission established a minimum bandwidth specification of 300 Hertz to 3000 Hertz which is consistent with the standard defined by the American National Standards Institute. Several state Commission's object to the Commission's reconsideration determination claiming, in part, that a range of 500 Hertz to 4000 Hertz may be necessary to provide rural areas with access to advanced technologies.<sup>6</sup> These petitions miss the point.

The Commission adopted the Joint Board's recommendation that the core service to be supported, at this time, was voice grade access to the public switched telephone network (PSTN). As the petitioners themselves recognize, few existing circuits that currently provide voice grade access to the PSTN could meet a voice grade standard defined as a range between 500 Hertz and 4000 Hertz. Thus, the consequence of adopting such a standard would either render existing services as ineligible for universal service support or turn the universal service fund into a mechanism for funding a massive construction program that would be required to meet the new standard. Neither result was contemplated by the Telecommunications Act of 1996 or by the

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<sup>5</sup> *Fourth Order* at ¶16.

<sup>6</sup> See Petitions of Washington Utilities and Transportation Commission; North Dakota Public Service Commission; South Dakota Public Utilities Commission.

Commission. The Commission's reconsideration determination merely conformed a technical specification with the policy determination that the core service to be supported by the universal service fund was voice grade access. The technical specification adopted in the *Fourth Order* is the industry standard for voice grade access.<sup>7</sup> As the Commission correctly concludes, use of this standard assures the widest participation by carriers as eligible carriers for universal service support.<sup>8</sup>

US West seeks reconsideration of the Commission's *Fourth Order* determination to the extent that it subjects common carriers providing internet access and internal connections to schools and libraries to the "Lowest Corresponding Price" (LCP) requirement.<sup>9</sup> US West's concern distills to its belief that there is no practical manner in which the LCP requirement could be monitored and enforced against non-carrier providers of internet access and internal connections. At the outset, BellSouth believes that the LCP requirement applies to all providers of internet access and internal connections not just to common carriers. Nevertheless, if US West is correct in its view that the Commission will be unable to monitor and enforce the LCP requirement against non-carriers, then US West's suggestion, that internet access and internal connections should be exempt from the LCP requirement regardless of the status of the provider,

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<sup>7</sup> Further, the specification adopted by the Commission is a minimum standard. It does not preclude carriers from providing a more exacting standard of service. If there are unique circumstances in a particular geographic area where it can be demonstrated that the minimum standard does not meet the objectives of the Commission's universal service rules, then state commissions would always be free to file a waiver of the Commission's rules to address the unique and limited circumstance that exists.

<sup>8</sup> *Fourth Order* at ¶ 16.

<sup>9</sup> US West at 4.

deserves consideration. US West's approach would ensure that, in practice, carrier and non-carrier providers are treated similarly.

BellSouth also supports US West's request for clarification that services provided pursuant to term pricing plans should be regarded as "existing contracts" under the Commission's rules.<sup>10</sup> As US West correctly explains, when a carrier provides a customer a service pursuant to a term plan set forth in a tariff, the effect is no different than if the service were provided pursuant to a negotiated contract. All of the material terms required by a contract that define the rights and liabilities of the customer and carrier are present in the tariff. To treat term plans provided pursuant to tariff differently from other existing contracts under the Commission's rules would elevate form over substance. Accordingly, the Commission should grant US West's request.

Several parties collectively seek reconsideration of the Commission's determination that state provided networks used by schools and libraries are ineligible for universal service support.<sup>11</sup> As a threshold matter, the petition merely repeats the same arguments that the Commission fully considered in its *Fourth Order*. There are absolutely no facts or legal basis offered by petitioners that demonstrate the Commission's conclusion was factually or legally erroneous. To the contrary, the plain language of the statute makes clear that only telecommunications services provided by common carriers are eligible for support.<sup>12</sup> As defined

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<sup>10</sup> US West at 10.

<sup>11</sup> The petitioners are the Washington State Department of Information Services (DIS), the Office of the Superintendent of Public Instruction (OSPI), the Washington State Library, the North Thruston School District No. 3, the Yakima Valley Regional Library, and Educational Service District No. 112, Vancouver.

<sup>12</sup> For this same reason the petition of Lan Neugent and Greg Weisinger should be denied.

by the Communications Act, telecommunications services are “the offering of telecommunications for a fee directly to the public, or to such classes of users so as to be effectively available directly to the public....”<sup>13</sup> Not only are state networks not offered to the public in general, these networks do not even serve the entire class of schools and libraries that are eligible to receive discounted services. Left unserved are the private institutions that are precluded from participating in these state-government sponsored networks. Notwithstanding the express provisions of the statute, it would be an ill-conceived policy that provided federal universal service support to private network providers who by definition can and do discriminate in their selection of who is and is not entitled to use such networks.

Likewise, the Southern Educational Communications Association’s (SECA) petition must be denied. SECA seeks to have wide area networks (WANs) purchased by schools and libraries supported by federal universal service funds. SECA argues that excluding private WANs from support runs counter to Commission policy. Fundamentally, such WANs are no different than state government provided private networks. Likewise, the issue raised by SECA’s petition is no different than that raised by the state telecommunications directors regarding state telecommunications networks. In both cases, the issue of which services are eligible for support is not exclusively one of policy, but rather it is primarily one of statutory authority. The Commission, in the *Fourth Order*, correctly determined that the statute limited

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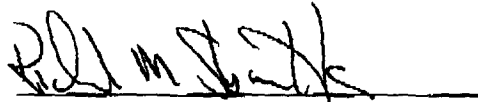
<sup>13</sup> 47 U.S.C. § 153(46)

support to telecommunications services. SECA has not shown otherwise. Accordingly, the Commission should reject SECA's petition.

Respectfully submitted,

BELLSOUTH CORPORATION

By:

A handwritten signature in dark ink, appearing to read "R. M. Sbaratta", is written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this 25th day of March 1998 served all parties to this action with a copy of the foregoing COMMENTS ON PETITIONS FOR RECONSIDERATION by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.

  
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